

ALERT

UPDATE: U.S. Treasury, Commerce, and State Departments Impose Sanctions and Export Control Measures on Russian Officials and Entities

March 18, 2021

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UPDATE: On March 18, 2021, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) expanded export restrictions on Russia pursuant to the March 2, 2021 determination by the U.S. Department of State that the Russian government had used chemical or biological weapons in violation of international law and against its own nationals. Specifically, BIS suspended the following license exceptions for national security-controlled items subject to the Export Administration Regulations (EAR) and destined for Russia: RPL (Servicing and Replacement of Parts and Equipment), TSU (Technology and Software Unrestricted), and APR (Additional Permissive Reexports). Moreover, BIS instituted a presumption of denial when reviewing license applications for exports of national security-controlled items to Russia, including applications for commercial end-users and civil end-uses.

Notwithstanding the foregoing, however, certain categories of exports and reexports will continue to be permitted under a partial waiver of the sanctions on national security grounds. Under this waiver, the following license exceptions remain available for national security-controlled items: TMP (Temporary Imports, Exports, Reexports, and Transfers), GOV (Governments, International Organizations, International Inspections under the Chemical Weapons Convention), BAG (Baggage), AVS (Aircraft, Vessels and Spacecraft), and ENC

Authors

Hon. Nazak Nikakhtar
Partner
202.719.3380
nnikakhtar@wiley.law

Lori E. Scheetz
Partner
202.719.7419
lscheetz@wiley.law

John R. Shane
Partner
202.719.7222
jshane@wiley.law

Practice Areas

Export Controls and Economic Sanctions
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National Security

(Encryption Commodities, Software and Technology). The waiver also applies to BIS's licensing of certain categories of export/reexport applications involving national security-controlled items, including items necessary for the safety of flight of civil fixed-wing passenger aircraft; deemed exports and reexports to Russian nationals; items destined for wholly-owned U.S. subsidiaries and other foreign subsidiaries of U.S. companies that are located in Russia; items in support of government space cooperation; and, until September 1, 2021, exports in support of commercial space launch activities, after which applications for such exports will be reviewed under a presumption of denial.

On March 2, 2021, the U.S. government announced a number of new measures targeting Russia following the poisoning and jailing of Russian opposition leader Alexey Navalny. The U.S. Departments of Treasury, Commerce, and State announced new sanctions and export controls, which are summarized below.

Department of Treasury: OFAC Sanctions

The Department of the Treasury announced the imposition of targeted sanctions measures on Russian officials in response to the Novichok nerve agent poisoning and imprisonment of Russian opposition leader Alexey Navalny. Novichok is a banned chemical weapon by the Organization for the Prohibition of Chemical Weapons. Russia is the only country known to have used this nerve agent, and the nerve agent is only available to Russian authorities. While Russia has denied any involvement, the U.S. government attributes the attack to the Russian Federal Security Service (FSB).

In response to the attack, the Treasury Department's Office of Foreign Assets Controls (OFAC) has designated as Specially Designated Nationals (SDNs) seven key Russian officials pursuant to Executive Order (EO) 13661 ("Blocking Property of Additional Persons Contributing to the Situation in Ukraine") for serving as officials of the Russian government:

- FSB Director Aleksandr Bortnikov (Bortnikov);
- Chief of the Presidential Policy Directorate Andrei Yarin (Yarin);
- First Deputy Chief of Staff of the Presidential Executive Office Sergei Kiriyyenko (Kiriyyenko);
- Deputy Minister of Defense Aleksey Krivoruchko (Krivoruchko);
- Deputy Minister of Defense Pavel Popov (Popov);
- Federal Penitentiary Service (FSIN) director Alexander Kalashnikov (Kalashnikov); and
- Prosecutor General Igor Krasnov (Krasnov).

Pursuant to EO 13382 (see below), OFAC further designated Bortnikov for acting or purporting to act for or on behalf of, directly or indirectly, the FSB.

OFAC's actions mean that all property and interests in property of the foregoing persons that come within the possession of U.S. persons are blocked. U.S. persons also are generally prohibited from engaging in transactions with these individuals, as well as any entities 50% or more owned by one or more designated

persons. Further, any foreign person who knowingly facilitates a significant transaction(s) for or on behalf of any one of these persons risks being sanctioned.

In 2018, Russia had used the Novichok nerve agent in the attempted assassination of former Russian military intelligence officer Sergi Skripal in the United Kingdom. In response, the U.S. government sanctioned several Russian persons associated with the attack and implemented prohibitions pursuant to the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991.

Department of Commerce: Entity List

The Department of Commerce's Bureau of Industry and Security (BIS) also announced it has added 14 entities located in Russia, Germany, and Switzerland to the Entity List based on proliferation activities in support of Russia's weapons of mass destruction programs and chemical weapons activities. The March 2 action supplements the August 2020 addition of five Russian government facilities to the Entity List for supporting Russia's chemical and biological weapons programs.

These 14 entities identified in BIS's Federal Register Notice are:

Germany

- Chimconnect Gmbh;
- Pharmcontract Gmbh; and
- Riol-Chemie.

Russia

- 27th Scientific Center of the Russian Ministry of Defense;
- Chimed Group;
- Femteco;
- Interlab;
- LabInvest;
- OOO Analit Products;
- OOO Intertech Instruments;
- Pharmcontract GC;
- Rau Farm; and
- Regionsnab.

Switzerland

- Chimconnect AG

The Entity List designation means that exports, reexports, and in-country transfers of items subject to the Export Administration Regulations (EAR), including low-level EAR99 commodities and technology, generally are prohibited to these entities without a license, and, according to BIS, no license exceptions will be available for these entities.

BIS also announced that it is “actively assessing appropriate measures” to implement under the EAR, in light of the Department of State’s recent determination, under Section 306(a) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW), that the Russian government has used chemical or biological weapons against its own nationals in violation of international law. The Bureau did not provide a timetable for the imposition of any measures.

Department of State: Sanctions Under the Chemical and Biological Weapons Act, CAATSA Section 231, and EO 13382

Further, the Department of State announced the expansion of existing sanctions under the U.S. Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, which were first imposed on Russia after its 2018 chemical weapon attack against Skripal.

The Department of State has also implemented measures under EO 13382 (“Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters”), which targets proliferators of weapons of mass destruction, in addition to sanctions against multiple Russian individuals and entities associated with the Russian government’s chemical weapons program and defense and intelligence sectors, under the Countering America’s Adversaries through the Sanctions Act (CAATSA).

Additionally, the Department of State’s Directorate of Defense Trade Controls (DDTC) intends to amend Section 126.1 of the International Traffic in Arms Regulations (ITAR) to include Russia in the list of countries subject to a policy of denial for exports of defense articles and services. While Russia has been subject to restrictive ITAR licensing policies in practice, the official designation of Russia as a Section 126.1 arms-embargoed country has a number of implications for U.S. companies. For example, most license applications are subject to a policy of denial, and most ITAR exemptions cannot be used for exports to Russia. Additionally, even proposals or presentations to sell defense articles to Russia require prior authorization from DDTC, and companies are subject to a mandatory notification requirement if they know of a proposed or actual sale or other transfer of an ITAR-controlled item to Russia. Certain exceptions will apply for exports in support of government space cooperation and commercial space launches, and U.S. government contractors will be permitted to use the Section 126.4(b)(2) ITAR exemption for work in support of cooperative government projects. However, exports supporting *commercial* space cooperation will be restricted following a six-month transition period, according to the Department of State.

Chemicals and Biological Weapons Sanctions Act

Finding that the Russian government has violated the Chemicals Weapons Convention by using a chemical weapon against its own nationals, the Department of State plans to impose specific sanctions after the 15-day Congressional notification period and following the publication of a Federal Register notice. The sanctions will remain in place for a minimum of 12 months, and are as follows:

- Termination of assistance to Russia under the Foreign Assistance Act of 1961 (except for urgent humanitarian assistance and food or other agricultural commodities or products);
- Termination of (a) sales to Russia of any defense articles or services under the Arms Export Control Act, and (b) licenses or other approvals to Russia of any items on the United States Munition List (except for government space cooperation, and commercial space cooperation following a six-month transition period);
- Termination of all foreign military financing for Russia under the Arms Export Control Act;
- Denial to Russia of any credit, credit guarantees, or other financial assistance by the U.S. government, including the U.S. Export-Import Bank; and
- Prohibition on exports to Russia of national security-sensitive goods or technology.

The U.S. government has also determined that it is essential to national security interests to waive certain restrictions on foreign assistance and exports.

CAATSA Section 231 List of Specified Persons

The Department of State also added six entities to the Section 231 List of Specified Persons as persons that are part of, or operate on behalf of, the defense or intelligence sectors of the Russian government in order to address the malign activities of the Russian defense sector, in particular with respect to its chemical weapons program, and the revenue, access, and influence that transactions with its defense sector provide the Russian government. Those entities are:

- 27th Scientific Center;
- 48 Central Scientific Research Institute Sergiev Posad (also known as 48 TsNII Sergiev Posad; aka 48th Central Research Institute, Sergiev Posad);
- 48 Central Scientific Research Institute Kirov (aka 48th Central Research Institute Kirov; aka 48th TsNII);
- 48 Central Scientific Research Institute Yekaterinburg (aka 48th TsNII Yekaterinburg);
- State Scientific Research Institute of Organic Chemistry and Technology (aka GoSNIIOKhT); and
- 33rd Scientific Research and Testing Institute (aka 33rd TsNII).

This listing means that any person (including foreign persons) who knowingly engages in a significant transaction with any of the foregoing entities will be subject to mandatory sanctions.

EO 13382 Sanctions

Finally, the Department of State designated the following persons pursuant to Section 1(a)(ii) of EO 13382 for having engaged, or having attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (e.g., missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items by Russia.

- FSB;
- GosNIIOKhT;
- The 33rd TsNII;
- The 27th Scientific Center;
- The Main Intelligence Directorate (GRU); and
- GRU Officers Alexander Yevgeniyevich Mishkin and Anatoliy Vladimirovich Chepiga.

While these designations are notable, from a practical standpoint, the FSB and the GRU have been designated as SDNs and subject to comprehensive U.S. sanctions for several years. U.S. companies also continue to be permitted to engage in limited dealings with the FSB, such as obtaining permits and certifications required to import, distribute, or use information technology products in Russia, via OFAC General License 1B.

The U.S. government's sweeping actions complement the European Union's (EU) sanctions on Russian officials, which were announced the same day, as well as those taken in October 2020 by the EU and the United Kingdom.

Wiley continues to closely monitor the U.S. government's efforts to address developing policy toward Russia. Should you have any questions on the new sanctions and export controls, please contact one of the attorneys listed on this alert.

Nicole Hager, a Law Clerk at Wiley Rein LLP, contributed to this alert.